

REMARKS

Reconsideration of the rejections set forth in the Office Action mailed October 5, 2004, is respectfully requested. Claims 1-5 and 7-11 remain pending.

Art Rejections

Claims 1-5 and 7 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Milder et al. (U.S. Patent No. 5,116,305) in view of Fischl (U.S. Patent No. 6,468,200). Claims 8-11 were rejected over Milder et al. in view of Manning (U.S. Patent No. 5,216,032) or Paradis (U.S. Patent No. 5,334,142).

As argued previously, the pending independent claims 1 and 8 specify that the length of the balloon is “approximately 3–6 cm.” Applicants respectfully assert that Milder et al. does not teach or suggest use of a balloon of that length and submit herewith a Declaration of Joyce A. Wahr, M.D., which establishes that the prior art teaches away from the claimed subject matter. Dr. Wahr was a Cardiac Anesthesiologist and is familiar with the use of intra aortic balloon pumps to augment the pumping action of the heart. (Declaration, para. 5). In her Declaration, Dr. Wahr explains that Milder et al. describes an intra aortic balloon pumping device (“IABP”). (Declaration, para. 4). Milder et al. teaches that the length of the balloon “from tip to tail, preferably is approximately 100 mm [10 cm].” (Col. 5, lines 12-13). Dr. Wahr explains that the length of the balloon is a critical feature for IABP because the volume displaced is directly proportional to length. In order to achieve adequate volume displacement, balloons used for IABP are typically 10 cm or longer. (Declaration, para. 6). Additionally, she states that it would be counterintuitive, and in fact counterproductive, to shorten the balloon described in Milder et al. in light of the need to provide sufficient volume

displacement. (Declaration, para. 7). Any shortening of the balloon would decrease efficiency of the IABP procedure and would therefore be avoided. (Declaration, para. 7).

In contrast, the pending claims specify that the length of the balloon is approximately 3-6 cm. The claimed devices are used to at least partially block the aorta to increase cerebral blood flow, not to achieve volume displacement as in IABP. The claimed balloon length is an important feature to achieve stability against blood flow in the aorta. Moreover, Dr. Wahr states that the shorter length of 3-6 cm is desirable over the longer length of 10 cm described in Milder et al. so that the balloon will not block any vessel that branches from the aorta, and therefore, represents a significant improvement as compared with the use of a longer IABP balloon. (Declaration, para. 8) Thus, Milder would plainly be inapplicable to the claimed invention because Milder's 10 cm balloon would block vessels that branch from the aorta. As demonstrated by the attached Declaration, a person skilled in the art would have rejected the Milder device as a potential solution to the important problem solved by applicant's invention.

Patent US 201C2
Attorney Docket: 161,700-040
(formerly 270/236)

For all the foregoing reasons, Applicants assert the claims are in condition for allowance.

Favorable action on the merits of the claims is therefore earnestly solicited. If the Examiner has any questions regarding this communication, or feels that an interview might facilitate prosecution of the application, she is invited to contact the undersigned at (949) 737-2900.

Respectfully submitted,
O'MELVENY & MYERS LLP

Dated: February 4, 2005

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicants

JCK/DKW/cp
O'Melveny & Myers LLP
114 Pacifica, Suite 100
Irvine, CA 92618-3315
(949) 737-2900